

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
CTC Telcom, Inc. d/b/a Mosaic Telecom)	
)	
Amendment of the Commission's Rules)	WT Docket No. 07-250
Governing Hearing Aid-Compatible Mobile)	
Handsets)	
)	

To: Chief, Wireless Telecommunications Bureau

PETITION FOR TEMPORARY WAIVER

CTC Telcom d/b/a Mosaic Telecom ("Mosaic" or "the Company"), by its attorneys and pursuant to Sections 1.3 and 1.925 of the Commission's Rules, hereby requests a one-year temporary waiver, up to and including January 15, 2011, of the requirements contained in Section 20.19(c)(3) of the Rules that at least fifty (50) percent of the handset models that Mosaic offers per air interface comply with Rule Section 20.19(b)(1) (*i.e.*, have a rating of M3- or better for radio frequency interference), as well as the requirements contained in Section 20.19(d)(3) of the Rules that at least one-third of the handset models Mosaic offers per air interface comply with Rule Section 20.19(b)(2) (*i.e.*, have a rating of T3- or better for inductive coupling capability).

In short, due to the lack of availability of mobile handsets designed for operation in the US market on the 1710-1755/2110-2155 MHz AWS bands using the advanced Universal Mobile Telecommunications System ("UMTS") Wideband CDMA ("WCDMA") air interface, Mosaic has only been able to offer its customers a selection of two (2) 1.7 GHz WCDMA handsets that are rated M3- or greater for RF interference immunity, and just two (2) 1.7 GHz WCDMA handsets that are rated T3- or greater for inductive coupling capability. Given Mosaic's current

offering of seven (7) distinct AWS-1 Band WCDMA handset models, the Company's selection of two (2) fully hearing aid compatible devices puts it in substantial compliance with the Commission's Rules, but, due to circumstances that are beyond its control, Mosaic is unable to meet the 50% M3- or greater and at least 33% T3- or greater HAC handset benchmarks. In support hereof, the following is shown:

Background

1. Mosaic is the licensee of Advanced Wireless Services ("AWS") Stations WQGL789 (Frequency Block A – Wisconsin 1 - Burnett CMA) ("CMA708"), WQKD784 (Frequency Block A – Wisconsin 2 – Bayfield CMA) ("CMA709 Submarket 2") and WQLE564 (Frequency Block C – Minneapolis-St. Paul, MN-WI-IA BEA) ("BEA107 Submarket 6"). The Company began offering CMRS service in northwest Wisconsin in July of 2009 using AWS-1 spectrum that it acquired in FCC Auction No. 66. The Company provides its rural CMRS service using 1700/2100 MHz AWS band spectrum only (*i.e.*, Mosaic does not own, lease or operate in the 850 MHz cellular or 1900 MHz PCS bands), and it recently acquired AWS spectrum partitioned from the Minneapolis BEA in a post-auction transaction.

2. Mosaic acquired AWS licenses in Auction No. 66 as a small business with attributed average annual gross revenues not exceeding \$40 million for the preceding three years, and it has significantly less than 500,000 subscribers. As such, it is a small business under the Commission's Designated Entity rules and a Tier III Commercial Mobile Radio Service ("CMRS") provider, as defined in the Commission's *Order to Stay*, 17 FCC Rcd. 14841, 14847 (2002) (the "*Non-Nationwide Carriers Order*").

3. Mosaic's rural AWS network utilizes WCDMA as its air interface technology. Although one Tier I service provider, T-Mobile USA, Inc. ("T-Mobile"), has incorporated AWS

band facilities into its nationwide network, upon information and belief, Mosaic is currently the only “all AWS-1 Band WCDMA” service provider in the country.

4. When the company first initiated its CMRS service in July of 2009, it offered its customers a selection of four (4) WCDMA 1700 handsets and two (2) of these devices, the Nokia 6263 (FCC ID QTKRM-207) and the Nokia 3555 (FCC ID QTKRM-257) were rated M3/T3 and were fully hearing aid compatible. Mosaic was therefore in full compliance with the Commission’s HAC Rules, since 50% of the handsets that it offered to consumers were rated M3- or better under the ANSI standard C63.19, and 50% of its handsets were rated T3- or better under the ANSI standard.

5. Starting in September of 2009, Mosaic began offering an additional WCDMA 1700 handset model, the Samsung SGH-T819 (FCC ID A3LSGHT819). Since this handset is not hearing aid compatible, 40% of Mosaic’s wireless handsets lineup was rated M3- or better, and 40% was rated T3- or better.

6. In October of 2009, and in anticipation of the year-end holiday market (and in response to its customers’ demands for a selection of smart phones and devices with Wi-Fi capability), Mosaic acquired two additional WCDMA 1700 handset models, the HTC Dash 3G (FCC ID NM8MAPL100 - marketed as the Mosaic Edge) and the HTC G1 (FCC ID NM8DRM, marketed as the Mosaic M1). Neither of these devices is hearing aid compatible, so upon adding these sought-after smart phones to Mosaic’s handset lineup, the Company was then offering (and it today offers) a total of seven (7) different digital wireless telephone models, of which 28.6% are fully hearing aid compatible (*i.e.*, M3/T3).

7. In the relatively brief time that the Company has been offering its wireless service, Mosaic has found WCDMA 1700 handsets to be very limited in quantity and difficult to obtain in the smaller quantities called for by a Tier III service provider. Mosaic's efforts to obtain a larger selection of WCDMA 1700 handsets, and additional models that have hearing aid compatibility features, have been further hampered by trademark/proprietary restriction issues (*i.e.*, handsets that are branded with another company's name and logos and that have proprietary firmware and software features) as well as apparent handset exclusivity arrangements. In this regard, after diligent research, including email and telephone inquiries with no fewer than seventeen (17) third-party handset distributors,¹ and a careful review of data taken from handset manufacturer hearing aid compatibility reports that were filed with the FCC last summer,² Mosaic was only able to identify three (3) additional WCDMA1700 handsets available in the U.S. market that have *any* type of HAC functionality.³ However, none of these phones will work properly for Mosaic customers because they are loaded with T-Mobile firmware/software (to support proprietary services such as "My Faves" and "Stick Together") and they are designed to seek out T-Mobile servers and email sites. And aside from these technical and trademark issues, the Sidekick LX (2009) cannot be offered by Mosaic because it is the subject of an exclusivity arrangement between T-Mobile and the manufacturer.⁴

8. As a result of the general unavailability of hearing aid compatible WCDMA 1700 handsets, and the demonstrated harmful impact of wireless handset exclusivity arrangements,

¹ See Attachment A.

² See Attachment B – info from July 2009 Report on HAC Information by Handset - based on manufacturer Form 655 reports (at <http://wireless.fcc.gov/hac/DeviceManufacturerInformationbyHandsetJuly2009.pdf>).

³ The FCC's July 2009 Report on HAC handsets (cited above) suggests that the Samsung SGH-T919 (Behold), Samsung SGH-T929 (Memoir) and the Sharp PV300 (otherwise known as the Sidekick LX) are each WCDMA 1700 devices that have achieved an M3 rating.

⁴ Even if the Sidekick were available to Mosaic, the Company would need to offer all three of these M3-rated WCDMA 1700 devices in order to achieve compliance with the 50% benchmark (based on 10 handsets offered), and this would not address the lack of available WCDMA 1700 devices that are rated T3- or better.

Mosaic finds that it is currently only able to offer its customers a selection of two (2) hearing aid compatible handset models – thus leaving it short of the 50% H3- or better and 33% T3- or better HAC handset benchmarks set forth in the Commission’s Rules.

Requirements of the Commission’s Rules

9. Section 20.19(c)(3) of the Commission’s Rules specifies, in relevant part, that “For each digital air interface for which it offers wireless handsets to customers, each service provider other than a Tier I carrier must ... [e]nsure that at least fifty (50) percent of the handset models it offers comply with paragraph (b)(1) of this section,” and “make available for consumers to test, in each retail store owned or operated by the provider, all of its handset models that comply with paragraph (b)(1) of this section.” Section 20.19(d)(3) of the Commission’s Rules specifies, in relevant part, that “For each digital air interface for which it offers wireless handsets to customers, each service provider other than a Tier I carrier must ...[e]nsure that at least one-third of the handset models it offers comply with paragraph (b)(2) of this section,” and “make available for consumers to test, in each retail store owned or operated by the provider, all of its handset models that comply with paragraph (b)(2) of this section.” Rule Section 20.19(b)(1) specifies that “a wireless handset used for digital CMRS ... is hearing aid compatible with regard to radio frequency interference ... if it meets ... at a minimum, the M3 rating associated with the technical standard set forth in ANSI C63.19-2007 (June 8, 2007).” Rule Section 20.19(b)(2) specifies that “a wireless handset used for digital CMRS ... is hearing aid compatible with regard to inductive coupling ... if it meets ... at a minimum, the T3 rating associated with the technical standard set forth in ANSI C63.19-2007 (June 8, 2007).” With respect to both capabilities, any grants of certification issued before January 1, 2010, under the earlier versions of ANSI C63.19 remain valid for hearing aid compatibility purposes.

10. The rules specified above are generally applicable to all Tier III CMRS carriers and based on Mosaic's current offering of seven (7) digital wireless handsets, require the Company to offer at least four (4) handset models that are rated M3- or better and at least three (3) handset models that are rated T3- or better, for its WCDMA 1700 digital air interface.

11. Because Mosaic offers more than two digital wireless telephones for the WCDMA air interface, it does not qualify for the *de minimis* exception codified in Section 20.19(e)(1) of the Commission's Rules.

Waiver Standard

12. The Commission has indicated generally that waiver requests of the Hearing Aid Compatible ("HAC") digital wireless handset requirements will be evaluated under the general waiver standard set forth in Sections 1.3 and 1.925 of the Rules and the standards set forth in WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) and Northeast Cellular Telephone Company v. FCC, 897 F.2d 1164 (D.C. Cir. 1990). Hearing Aid Compatible Telephones (WT Docket No. 01-309 – *Order on Reconsideration and Further Notice of Proposed Rulemaking*), FCC 05-122, released June 21, 2005 at Para. No. 50 ("*HAC Order on Reconsideration*").

13. Section 1.3 of the Rules states, in relevant part, that "[a]ny provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown." Section 1.925(b)(3) of the Rules states that the "Commission may grant a waiver request if it is shown that: (i) [t]he underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) [i]n view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to

the public interest, or the applicant has no reasonable alternative.” Under WAIT Radio and Northeast Cellular Telephone Company, a rule waiver “may be granted in instances where the particular facts make strict compliance inconsistent with the public interest if applied to the petitioner and when the relief requested would not undermine the policy objective of the rule in question.” *HAC Order on Reconsideration*, Para. 50 (note 158).

A. Waiver Is Warranted in Mosaic’s Case Because Sufficient Compliant Handset Models are Not Available for Small Carriers That Utilize the WCDMA 1700 Air Interface

14. The reason in support of this waiver request is abundantly clear and can be stated as follows: There is currently limited availability of HAC-compliant digital wireless telephone models available for purchase by smaller carriers, such as Mosaic, that have AWS-1 band systems that utilize the WCDMA air interface. As a result, full compliance with the requirements of the Commission’s HAC Rules is impossible, and, a temporary waiver of these requirements is clearly warranted.

15. In adopting the Rule Section 20.19(c)(3) and (d)(3) HAC handset minimum percentage benchmarks, the Commission projected (but, obviously, could not assure) that a sufficient number of models of digital wireless handsets meeting the M3- and T3- standards would be made available by the manufacturers for purchase by smaller carriers by the relevant benchmark dates. *See* Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets, WT Docket No. 07-250, *First Report and Order*, 44 CR 565 23 FCC Rcd 3406 FCC 08-68 23 FCC Rcd 3406 (2008). While significant progress has been made toward developing compliant handsets for more common air interface technologies and frequency bands, it does not appear that research, development and manufacturing activities have reached the point where the handset manufacturers can make a sufficient number of models of

compliant handsets commercially available to WCDMA service providers that utilize the AWS-1 bands and that do not purchase handsets in quantities comparable to Tier I carriers. Moreover, because the market for WCDMA 1700 handsets is currently so small, third-party distributors have not helped to drive handset manufacturing and availability for smaller carriers. Even assuming that new WCDMA 1700 handsets become available, there is no guarantee that these devices will be hearing aid compatible (such as the newly released Google Nexus One, which is not HAC compliant) or that availability of other new WCDMA 1700 devices with hearing aid compatibility will not be restricted due to proprietary software, firmware, branding or handset exclusivity agreements. As a simple matter of economics (and if the past is prologue), handset manufacturers will continue to focus their efforts on meeting the needs of the larger (*i.e.*, Tier I) carriers, to the exclusion of smaller carriers.

16. Given these facts and circumstances, it seems abundantly clear that the temporary relief requested herein is warranted and in the public interest, and that good cause exists to grant the temporary waiver requested. In this case, it is impossible for Mosaic to comply with the 50% M3-rated benchmark because of the limited availability of compliant WCDMA 1700 handsets, technical and trademark issues, and a handset exclusivity arrangement. Mosaic cannot comply with the 33% T3-rated because only two (2) T-3 compliant WCDMA 1700 phones appear to be in existence, and Mosaic already offers both.

17. Where the Commission's projections of technological feasibility and commercial availability do not pan out, waiver of the requirements would appear to be particularly appropriate. Indeed, basic principles of administrative law prohibit the Commission from compelling carriers to do the impossible. *See, e.g., Alliance for Cannabis Therapeutics v. DEA*, 930 F.2d 936, 940 (D.C. Cir. 1991); Hughey v. JMS Development Corp., 78 F.3d 1523, 1530

(11th Cir. 1996). Furthermore, the Commission has acknowledged that Tier II and Tier III CMRS carriers “have much less ability than the nationwide CMRS carriers to obtain specific vendor commitments necessary” to deploy the equipment needed to meet regulatory requirements; that “handset vendors ... give priority to the larger, nationwide carriers;” that the deployment needs of the larger carriers create “downstream delays for Tier II and III carriers;” and, accordingly, “that there are temporary and special circumstances applicable to [Tier II and Tier III carriers] that constitute a sufficient basis to grant a stay on a limited and temporary basis” from Commission-imposed regulatory requirements. *See Non-Nationwide Carriers Order*, 17 FCC Rcd. 14841, Para Nos. 10 and 11 (2002). *See also, FCI 900, Inc.*, 16 FCC Rcd. 11072 (Comm. Wir, Div., WTB 2001) (granting all 900 MHz MTA licensees an extension of the construction deadline so that they might deploy advanced digital 900 MHz systems, where the subject digital voice equipment was not commercially available in sufficient quantities in time to meet the five-year construction deadline).⁵ Mosaic simply has no control over the equipment development, manufacturing and distribution practices of the handset manufacturers. The lack of sufficient, available digital wireless handset models for the WCDMA 1700 air interface that meet the Commission’s HAC requirements is clearly a circumstance clearly beyond a small carrier’s control. In view of the unique or unusual factual circumstances present here, application of the rule would clearly be inequitable, unduly burdensome and contrary to the public interest. In view of the fact only a small selection of compliant digital wireless handset models is currently

⁵ Additional case precedent supports this position. *See Leap Wireless International, Inc.*, 16 FCC Rcd. 19573 (Comm. Wir. Div., WTB (2001) (granting extension of time so that licensee might deploy “high data rate” wireless technology that was not available in time to meet the five-year construction requirement); *Monet Mobile Networks, Inc.*, 17 FCC Rcd. 6452 (Comm. Wir. Div., WTB 2002) (granting extension of time so that licensee might deploy “high data rate” wireless technology that was not available in time to meet the five-year construction requirement); and *Warren C. Havens*, Mimeo DA 04-2100, adopted July 12, 2004 (granting extension of the five-year construction requirement for 220 MHz licensees to allow for the use of next-generation digital technology in the band).

available for the WCDMA 1700 (at least for purchase by smaller carriers), Mosaic clearly has no reasonable alternative but to request the instant waiver.

18. Mosaic wishes to assure the Commission that it is committed to providing its hearing impaired subscribers with a wider selection of WCDMA 1700 handsets meeting an M3- and/or T3- rating under ANSI Standard C63.19 at the earliest practicable date, and that it will do so promptly once these handsets become generally available to Tier III carriers. In this regard, Mosaic wishes to emphasize that it is partially compliant with the Commission's requirements because it currently markets two (2) handset models that meet an M3/T3 rating under ANSI standard C63.19. Thus, its hearing-impaired customers do have a choice of products; and Mosaic will increase the number of choices as soon as handsets become available.

WHEREFORE, good cause shown, Mosaic requests that the instant petition be granted.

Respectfully submitted,

CTC Telcom, Inc. d/b/a Mosaic Telecom



D. Cary Mitchell
Its Attorney

Blooston, Mordkofsky, Dickens,
Duffy & Prendergast, LLP
2120 L Street, N.W Suite 300
Washington, D.C. 20037
Tel: 202-828-5538
FAX: 202-828-5568
E-mail: cary@bloostonlaw.com

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DECLARATION UNDER PENALTY OF PERJURY OF RICKY S. VERGIN

1. My name is Ricky S. Vergin, and I am the Chief Executive Officer of CTC Telcom, Inc. d/b/a Mosaic Telecom, P.O. Box 64, Cameron, WI 54822.
2. I hereby certify under penalty of perjury that I have reviewed the foregoing Petition for Temporary Waiver or Temporary Stay, and except for those matters of which the Federal Communications Commission may take official notice, or those matters attributed to other persons, the factual assertions set forth in the Petition are true and correct to the best of my knowledge.

Signed: _____



Dated: January 14, 2010

Exhibit A

A list of distributors from whom Mosaic Telecom has attempted to acquire HAC compliant handsets is provided below:

<u>Distributor</u>	<u>Location</u>	<u>Contact Info</u>
Brightpoint	Indiana	317-707-2025
Midway Distributors	Idaho	208-375-7827
Capital Discount	California	213-484-6667
Lingo Trading	New York	718-554-0606
CTB Wireless	California	626-345-9709
Square Circuit	Michigan	248-565-4603
Fashion Electronics	Maryland	240-453-9109
GSM Experts	New York	718-567-0111
Wireox	Michigan	248-565-4606
Mobilistic	New York	631-531-9500
Planet Cellular	California	562-802-1380
Aerovoice	California	949-212-1991
PCS Wireless	New Jersey	973-805-9700
Cellular Concepts	Florida	954-979-9929
Quality 1 Wireless	Florida	407-857-3747
Acer	California	949-212-1991
Google Inc.	California	www.google.com

Exhibit B

WCDMA Devices Capable of Operating on AWS-1 Bands

Mfg	Model	FCC ID	Avail.	M-	T-	Air Interface(s) & Bands
HTC	DREA100	NM8DRM	09/08	n/a	n/a	GSM, WCDMA, GSM 850, 1700, 1900
HTC	MAPL100	NM8MAPL100	06/09	n/a	n/a	GSM, WCDMA, GSM 850, 1700, 1900
HTC	RHOD210	NM8RHOD210	06/09	n/a	n/a	GSM, WCDMA, GSM 850, 1700, 1900
HTC	SAPP300	NM8SPRM	06/09	n/a	n/a	GSM, WCDMA, GSM 850, 1700, 1900
Nokia	3555	QMNRM-257	01/09	M3	T3	GSM, WCDMA, GSM, WCDMA 850, 1700, 1900, 2100
Samsung	SGH-T639, SGH-T636	A3LSGHT639, A3LSGHT639	07/08	n/a	n/a	GSM, WCDMA, GSM 850, 1700, 1900
Samsung	SGH-T819	A3LSGHT819	11/07	n/a	n/a	GSM, WCDMA, GSM 850, 1700, 1900
Samsung	SGH-T919	A3LSGHT919	09/08	M3	n/a	GSM, WCDMA, GSM 850, 1700, 1900
Samsung	SGH-T929	A3LSGHT929	12/08	M3	n/a	GSM, WCDMA, GSM 850, 1700, 1900
Sharp	PV300	APYNAR0065	04/09	M3	n/a	GSM, WCDMA, GSM 850, 1700, 1900
Sony Ericsson	TM506	PY7A3132011	08/08	n/a	N/a	GSM, WCDMA, GSM, GSM, WCDMA 850, 1700, 1800, 1900, 2100

Info taken from the July 2009 FCC WTB Report on HAC Information by Handset
<http://wireless.fcc.gov/hac/DeviceManufacturerInformationbyHandsetJuly2009.pdf>